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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/788,521

02/27/2004

Josef Chalupper

P04,0054

6889

26574

7590

02/09/2009

SCHIFF HARDIN, LLP  
PATENT DEPARTMENT  
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EXAMINER

MONIKANG, GEORGE C

ART UNIT

PAPER NUMBER

2614

MAIL DATE

DELIVERY MODE

02/09/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/788,521	<b>Applicant(s)</b> CHALUPPER ET AL.	
	<b>Examiner</b> GEORGE C. MONIKANG	<b>Art Unit</b> 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 2 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-9 and 11-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☒ Certified copies of the priority documents have been received in Application No. 10/788,521.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments, filed 10/27/2008, with respect to the rejection(s) of claim(s) 1, 3-9 & 11-16 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Shennib, US Patent 5,825,894.

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 3-9, 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niederdrank, WO 02/28143 A2, in view of Shennib, US Patent 5,825,894. (The Niederdrank and Shennib references are cited in IDS filed 3/27/2006).

Re Claim 1, Niederdrank discloses a method to automatically adjust a second hearing device (*abstract*), comprising: automatically analyzing a first hearing device that produces an analysis result (*col. 4, lines 16-25*) by providing an input signal to the first hearing aid device and analyzing a corresponding output signal of the first hearing aid device (*col. 4, lines 25-47*); determining setting parameters of the second hearing device based on the analysis result of the first hearing device (*col. 4, lines 48-54*); and adjusting the second hearing device based on the determined setting parameters (*col.*

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4, lines 48-54); but fails to disclose providing an input signal to the first hearing device and analyzing a corresponding output signal of the first hearing device to identify a transfer function of the first hearing device that represents a ratio of said output sound signal to said input sound signal as taught in Shennib (Shennib, abstract). It would have been obvious to substitute the hearing aids of Niederdrank with the hearing aid comprising transfer function calculating means as taught in Shennib (Shennib, abstract) for the purpose of adapting the hearing aids to different acoustic environments.

Re Claim 3, the combined teachings of Niederdrank and Shennib disclose the method according to claim 1, wherein the analysis comprises reading the setting parameters from the first hearing device (Niederdrank, fig. 2: 14; col. 4, lines 35-47).

Re Claim 4, the combined teachings of Niederdrank and Shennib disclose the method according to claim 1, wherein the automatic analysis comprises reading out setting parameters and simulating a behavior of the first hearing device with a simulation model (Niederdrank, col. 4, lines 26-47).

Re Claim 5, Niederdrank discloses the combined teachings of Niederdrank and Shennib disclose the method according to claim 1, further comprising making an acoustic measurement of the second hearing device after its adjustment (Niederdrank, col. 4, lines 48-58).

Re Claim 6, the combined teachings of Niederdrank and Shennib disclose the method according to claim 1, further comprising utilizing a dynamic model for the adjusting of the second hearing device in which tuning events of the second hearing device are considered (Niederdrank, col. 3, lines 35-50).

Re Claim 7, the combined teachings of Niederdrank and Shennib disclose the method according to claim 1, further comprising implementing audiological measurements and utilizing the audiological measurements for the adjusting of the second hearing device (*Niederdrank, col. 2, lines 18-23*).

Re Claim 8, the combined teachings of Niederdrank and Shennib disclose the method according to claim 1, further comprising, after the adjustment, changing the setting parameters of the second hearing device based on determined setting parameters in a predetermined time span (*Niederdrank, col. 3, lines 51-57*), to predefined setting parameters (*Niederdrank, col. 4, lines 48-58*).

Claim 9 has been analyzed and rejected according to claim 1.

Claim 11 has been analyzed and rejected according to claim 3.

Claim 12 has been analyzed and rejected according to claim 4.

Claim 13 has been analyzed and rejected according to claim 5.

Claim 14 has been analyzed and rejected according to claim 6.

Claim 15 has been analyzed and rejected according to claim 7.

Claim 16 has been analyzed and rejected according to claim 8.

### **Contact**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GEORGE C. MONIKANG whose telephone number is (571)270-1190. The examiner can normally be reached on M-F. alt Fri. Off 7:30am-5:00pm (est).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chin Vivian can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George C Monikang/  
Examiner, Art Unit 2614

1/25/2009

/Vivian Chin/  
Supervisory Patent Examiner, Art Unit 2614

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